

\* IN THE "UNITED" STATES "DISTRICT" COURT \*  
\* FOR THE "DISTRICT OF" DELAWARE \*

CURTIS M. COLLINS

\*

Case No. 105-739-SLR

Plaintiff

\*

Jury Trial Requested

v.

\*

WARDEN RICK KEARNEY, ET AL. \*

D.E.F.T.

"  
PLAINTIFF  
ANSWERIN' " BRIEF "

CURTIS M. COLLINS

Smyrna, DELAWARE, D.E.P.T. OF

CORRECTIONS, 11'81, PADDOCK, ROAD

Binding. 21# C-U-3#

DATE:

12-27-06

1997

IN THE UNITED STATES DISTRICT COURT

\* FOR THE DISTRICT OF DELAWARE \*

CURTIS M. COLLINS )  
PL

v.

CDV. NO. 05-739-S.L.R.

WARDEN RICK HEARNEY )  
DF ET AL

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STATE 'DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT

DEPOSITION QUESTION Nancy Rebeschini

A DESCRIPTORY  
OPENING BRIEF

IN THE UNITED STATES DISTRICT COURT

\* FOR THE DISTRICT OF DELAWARE \*

CURTIS M. COLLINS  
Pl

v.

Case No. 05-739-S.L.R.

WARDEN ROCK HEARNEY  
Def

ET AL

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8<sup>#</sup> AMENDMENT / 14<sup>#</sup> AMENDMENT

Summary Argument

NUMBER 2<sup>nd</sup> OFFICER BEREZANSKY, AND OFFICER DABSKY DID USE EXCESSIVE FORCE ON MR. COLLINS, MR. COLLINS CAN PROVE THIS WITH HIS WITNESSES THAT WILL TESTIFY IN TRIAL  
.....

PAGE 3<sup>rd</sup>

NUMBER 3<sup>rd</sup> SGT, CHANDLER CAN BE HELD ACCOUNTABLE FOR HIS MISREGARDING BECAUSE THAT MR. COLLINS CAME TO SGT CHANDLER TO GET THE PROBLEMS RESOLVED THAT MR. COLLINS WAS HAVING C/O BEREZANSKY AND THIS SGT, CHANDLER WASNT DOING HIS JOB AS A SERGEANT VIOLATED THE PRISONER RIGHT/AMENDMENT

PAGE 3<sup>rd</sup>

NUMBER 4<sup>th</sup> COLLINS WAS NOT TREATED FOR TWO FRACTURE RIB

THE ONLY TIME THAT MR. COLLINS WAS SOME WHAT TREATED FOR FRACTURE RIB WAS ON 9-22-05 WHEN DOCTOR BURNS TOLD MR. COLLINS ON THAT DATE 9-22-05 THAT HE HAD FRACTURE RIBS

\* DISTRICT COURT OF DELAWARE \*

## • NATURE AND STAGE OF THE PROCEEDING •

ON AUG 6, 05

THE PLAINTIFF CURTIS M. COLLINS HAD ENTERED THE MAIN CHOW HALL AT BREAKFAST TIME WHEN AT THE S.C.I. CENTER LOCATED IN GEORGETOWN, DEL. MR. COLLINS ASKED OTHERS INMATES ALREADY SEATED AT THE TABLE TO SHED DOWN SO HE COULD SET DOWN TO EAT, AT WHICH TIME C/O BEREZANSKY TOLD MR. COLLINS TO SHUT THE FUCK UP AND THROW YOUR FUCKING FOOD TRAY AWAY. MR. COLLINS ASKED C/O BEREZANSKY WHY HE HAD TO THROW AWAY HIS FOOD TRAY C/O BEREZANSKY RESPONDED THERE NO TALKIN IN THE CHOW HALL. MR. COLLINS WAS NOT HAVEN A CONVERSATION WITH ANOTHER INMATE HE WAS JUST SIMPLY TRYING TO GET A PLACE TO SIT SO HE COULD EAT HIS FOOD. MR. COLLINS THEN USE THE CHAIN OF COMMAND RANK IN WHICH HE ASK SGT CHANDLER WHY THAT HE COULDN'T FINISH HIS MEAL. SGT CHANDLER DID NOT RESPOND TO MR. COLLINS DUMP HIS FOOD TRAY, AS MR. COLLINS WAS DEPARTING FROM THE CHOW HALL C/O BEREZANSKY MADE A WISE COMMENT DIRECTED TO MR. COLLINS, THEN MR. COLLINS TURNED AROUND TO HEAR WHAT C/O BEREZANSKY HAD TO SAY IN CASE HE WAS GIVE ME ANOTHER DIRECT ORDER C/O BEREZANSKY CAME CHARGIN AT MR. COLLINS AND PUNCHED MR. COLLINS IN THE FACE IN THE CHOW HALL THAT HAND CUFF MR. COLLINS THEN PEPPER SPRAY MR. COLLINS WITH TWO CANS THEN THE REST OF THE C/O STAFF GOT INVOLVED AND MALICIOUSLY ASSAULT MR. COLLINS, MEMBER FROM S.C.I. MEDICAL STAFF REFUSE TO LOOK AT MR. COLLINS INJURIES SHE TOLD MR. COLLINS TO STOP CRYING LIKE A LITTLE Bitch MR. COLLINS WENT 4<sup>th</sup> DAYS WITHOUT RECEIVING PROPER

NATURAL PROCEEDINGS

p 4  
P4

\* DISTRICT COURT \*

MEDICAL TREATMENT. SINCE THEN X-RAYS WERE TAKEN  
OF MR COLLINS Ribs THAT DISPLAYED HIS Ribs  
WAS SERIOUSLY FRACTURED. MR COLLINS WAS REFUSE  
COPIES OF HIS MEDICAL REPORT BY THE DOCTOR AT  
S.C.C. CORRECTIONAL CENTER DEL,

\*

\*SUMMARY OF THE FACTS\*

DELAWARE D.E.P.T. OF CORRECTION has a DIETITIAN who PUTS TOGETHER A MENU IN WHICH AN INMATE WILL RECEIVE ALL PROPER NUTRIENTS, D.E.P.T. OF CORRECTIONAL COMMISSIONER (STANLEY TAYLOR) AND S.C.E. CORRECTIONAL INSTITUTION WARDEN RICK KEARNEY SUPPORTS THEIR CORRECTIONAL OFFICER TO VIOLATE INMATES FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS UNDER CIVIL RIGHT ACT BY PERMITTING THE CORRECTIONAL OFFICER TO ORDER AN INMATE TO DUMP THEIR FOOD TRAY AND NOT PROVIDING THE ~~REQUIRED~~ REQUIRED FOOD NUTRIENT DESIGN by the DIETITIAN.

PAGE 5

~~STATEMENT OF THE FACTS~~

COLLINS DEPOSITION 12/18-11 CLAIM THAT I HAVE A HISTORY OF DISCIPLINARY PROBLEMS WHEN IT CAME TO MEAL ON TWO OCCASIONS I DON'T RECALL KNOW WRITS UP IN Smyrna DICK. CHOW HALL PLEASE SHOW THE WRIT UP

DURING ONE MEAL AN OFFICER HAD DISMISSED THE CHOW HALL AND COLLINS CONTINUE TO SIT DOWN AND EAT AFTER BEING TOLD IT WAS TIME TO LEAVE COLLINS REPLIED FUCK YOU THAT IS A OUT RIGHT LIE FALSE "WHAT THE PRISON MAKING FALSE WRIT UP ON ME NOW!

I REMEMBER THAT I HAD A WRIT UP ON MEDIUM SECURITY FROM SAMUEL, HASTINGS WROTE ME UP FOR OBSCENELY THREATENING BEHAVIOR BECAUSE HE WAKES TO TALK ABOUT PEOPLE MOTHER AND MY MOTHER HAD PASS AWAY A WHILE BACK AND I DON'T HAVE NOBODY TO TALK ABOUT MY <sup>MOM</sup> SAMUEL, HASTINGS DON'T EVEN KNOW MY ~~MOM~~ I GAVE A SYRUP TO ANOTHER INMATE IN THE CHOW HALL BECAUSE HE DID NOT HAVE ANY SO SAMUEL SAID MY MOM THX AND THAT SO I STATE FUCK YOU BUT IT NOT MAKE THE WAY MS TRESS PUT IT ON HER WRITINGS I WASH SEND THE ORINGAL WRIT UP,

PAGE 6

I WAS NOT TALKING TO SOMEONE AT ANOTHER TABLES I WAS SPEAKING TO SOMEONE AT THE SAME TABLE TO SLEEP DOWN SO THAT I CAN SIT DOWN TO EAT A MEAL AND I DO HAVE PROFF, MY WITNESSES WILL TELL THE COURTS I JUST NOW FOUND OUT WHO I WAS TELLIN TO SLEEP DOWN HE IS ALSO HEAR IN SMYRNA NATEDANIEL, SMITH" ALSO CLAIMS THAT C/ BEREZANSKY ASSAULTED HIM IN-PRE-TRIAL-AT. S.C.T.



~~STATE OF THE FACT~~

Page  
7<sup>th</sup>

COLLINS FOR INJURIES THE NURSE HEN FOUND NO NOTED INJURIES NO NOTED BRUISING SHE, DIDNT EXAMINE ME AT HOW IS NURSE GOING TO SEE IF THERE WAS ANY BRUISING I WAS IN HANDCUFFS, AND SHE NEVER LEFT UP MY T-SHIRT TO CHECK MY RIBS OUT AND BESTED THAT THERE WAS KNOW BRIST WIGHT IN A SDA HOLDING ROOM THATS WHERE SHE CAME TO SEE ME A.S.D.A HOLDING ROOM, AND SHE STOOD BACK FROM ME ABOUT TEN FEET AND SAID TO ME STOP CRYING HERE A LITTLE BITCH THEN THE CO, TOOK ME TO A.S.D.A AND I HAVE ANOTHER WITNESSES THAT WILL TESTIFY ON THE NURSE SO ALL OF THAT MOVE MY FINGER FREELY IS A FAISE STATEMENT"

Page  
16<sup>th</sup>

OFFICER BEREZANSKY TOLD COLLINS TO EITHER STOP TALKING IN THE CHOW HALL OR DUMP HAS TRYING THAT IS A OUT RIGHT LIE AND I HAVE MY WITNESSES

Page 16<sup>th</sup> THAT, COLLINS SUFFERED A FRACTURED RIBS PRIOR TO THE 8-6-05 INCIDENT AS A RESULT OF WORKING OUT THAT DIDNT TRANSPARE WAKE THAT, AND I NEVER HAD A HISTORY OF, SUICIDAL ATTEMPS AND THE INJURY DID NOT COME FROM COLLINS DISORDERLY ACTION THE INJURY CAME FROM CORRECTIONAL OFFICER PUNCHING AND KICKING MR. COLLINS

PAGE 18<sup>18</sup> COLLINS DID NOT HUNG TOWARDS BEREZANSKY  
 WHY WOULD I HUNG AT A HUGE PERSON THATS AS 6 FOOT 5"  
 AND WEIGHT AT 367 POUNDS OFFICER BEREZANSKY  
 CHARGE AT MR COLLINS AND I HAVE ABOUT 15<sup>15</sup> WITNESSES  
 THAT IS WILLING TO TESTIFY

PAGE 18<sup>18</sup>

Sgt CHANDLER, DID LAUGH AT MR. COLLINS I HAVE ALL  
 THE KITCHEN WORKER THAT WILL VERIFY THIS  
 COLLINS HAD NOT JUST BEEN CAPSTUNNED STUNNED COLLINS  
 WAS IN HANDCUFFS FIRST THAN CAPSTUNNED, STUNNED  
 AND THEN ASSAULTED by the 9's my head WAS FACE DOWN  
 BUT I CAN SEE JUST LITTLE, bit FROM THE CORNER OF my  
 eyes

PAGE 20<sup>20</sup>

8-8-05 TWO DAYS AFTER THE INCIDENT COLLINS  
 RECEIVED ART-X-RAY EXAMINATION OF, his Ribs by  
 DR. MAHENDRA PAREKH OF MID DELAWARE IMAGING ON  
 AUGUST 10-05- ONLY FOUR DAYS AFTER THE INCIDENT  
 I DID, NOT HAVE A EX-RAY. FOUR-DAYS AFTER THE INCIDENT  
 I WAS SCHEDULE FOR A EX-RAY FOUR DAYS AFTER  
 THE INCIDENT I HAD MY EX-RAYS DONE ON 8-17-05  
 ELEVEN DAYS AFTER THE INCIDENT WHAT S.C.D.  
 IS TEMPERING WITH THE EX-RAYS DATES NOW!

PLEASE LOOK AT THE PHYSICIAN ORDER IN THE PLAINTIFF  
 APPENDIX you WILL SEE THE PLAINTIFF EX-DONE ON  
 -8-17-05

~~STATE~~ OF FACTS

Page 18<sup>4</sup>

COLLINS DID NOT HUNG TOWARDS % BEREZANSKY

WHY WOULD I HUNG A HUGE 363 POUNDS MAN,

COLLINS ALSO HAVE ALL THE KITCHEN WORKING

THAT WERE ATTACK WHEN % BEREZANSKY CHARGE AT MR COLLINS

AND PUNCH MR COLLINS IN THE FACE "MR COLLINS

HAVE ALL <sup>OF</sup> THE KITCHEN WORKING AND SOME OF THE

INMATES WILL TESTIFY IN COURT "BOBBY PRICE"

DONALD DAVIS, INMATES THAT WAS WORKING IN THE

S.C. C. CHOW HALL AT THE TIME OF THE BRUTAL

ASSAULT TOOK PLACE

# CERTIFICATE OF SERVICE

I CURTIS COLLINS hereby CERTIFY  
THAT ON 12-21-06

I CAUSED A TRUE AND CORRECT COPY OF THE  
ANSWERING BRIEF ATTACHED WAS  
HANDLED TO A DCC, CORR, CENTER  
TO PLACE IN A DCC US. MAILING SYSTEM  
TO FORWARD TO:

CLERK

D. E. F. T., COURSEL

ERICKA Y. THOS

Deputy Attorney General  
D. E. F. T. OF JUSTICE,

CARVER STATE b. l. D. g.

800<sup>th</sup> St  
Nt, French Wilm, Del  
19801

UNITED STATES DISTRICT COURT  
OF  
DELAWARE HOCK, Box 18<sup>#</sup>  
844 N King St Wilm, Del  
19801-3576

RESPECTFULLY

CURTIS COLLINS  
DEL / CORR / CENTER  
3MYRNA DEL, 1181 Paddock Road

1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CURTIS M. COLLINS,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-739-SLR
v.	)	
	)	
WARDEN RICK KEARNEY,	)	
SGT. JAMES CHANDLER, and	)	
C/O BEREZINSKY,	)	
	)	
Defendants.	)	

**DEFENDANTS' ANSWER TO THE COMPLAINT**

COMES NOW, the Defendants Warden Rick Kearney, Sgt. James Chandler, and Officer Bradley Berezansky (the "Defendants"), by and through their undersigned counsel, and hereby respond to the Complaint of Plaintiff Curtis M. Collins ("Collins" or "Plaintiff"), dated October 18, 2005 and filed October 21, 2005 (D.I. 2) (the "Complaint"). The Complaint is not formatted in paragraphs nor is it numbered. Therefore Defendants respond to the Complaint by sentence as follows:

**STATEMENT OF CLAIM AND ADDENDUM**

Sentence No. 1: The allegations of Sentence No. 1 of the Complaint that begin with, "Warden this person knows" are denied.

Sentence No. 2: The allegations of Sentence No. 2 of the Complaint that begin with, "C/O Berezinsky punched" are denied.

Sentence No. 3: The allegations of Sentence No. 3 of the Complaint that begin with, "Now comes the above" are denied.

Sentence No. 4: Defendants admit that Plaintiff was talking during

breakfast. Defendants deny each and every allegation of Sentence No. 4 of the Complaint not specifically admitted herein.

Sentence No. 5: The allegations of Sentence No. 5 of the Complaint that begin with, "Where as officer (Berezinsky)" are denied.

Sentence No. 6: The allegations of Sentence No. 6 of the Complaint that begin with "The plaintiff asked officer" are denied.

Sentence No. 7: The allegations of Sentence No. 7 of the Complaint that begin with "Now the Plaintiff understands" are admitted.

Sentence No. 8: The allegations of Sentence No. 8 of the Complaint that begin with "However if officer" are denied.

Sentence No. 9: The allegations of Sentence No. 9 of the Complaint that begin with, "Therefore officer wrongly" are denied.

Sentence No. 10: Defendants admit that Plaintiff was ordered to dump his tray. By way of further response to the allegations of Sentence No. 10 of the Complaint, Defendants state that Plaintiff was ordered to dump his tray as a result of disobeying a direct order. Defendants deny each and every allegation of Sentence No. 10 not specifically admitted herein.

Sentence No. 11: <sup>WFE ✓</sup> The allegations of Sentence No. 11 of the Complaint that begin with, "So plaintiff obeyed" are denied.

Sentence No. 12: <sup>WFE ✓</sup> The allegations of Sentence No. 12 of the Complaint that begin with, "Then plaintiff approaches" are denied.

Sentence No. 13: <sup>WFE ✓</sup> The allegations of Sentence No. 13 of the Complaint that begin with, "So Sergeant Chandler" are denied.

Sentence No. 14: The allegations of Sentence No. 14 of the Complaint that begin with, "As plaintiff was speaking" are denied. ~~LEE~~ ✓

Sentence No. 15: The allegations of Sentence No. 15 of the Complaint that begin with, "So as plaintiff was leaving" are denied.

Sentence No. 16: Defendants admit that Plaintiff turned around to face Officer Berezansky. Defendants deny each and every allegation of Sentence No. 16 of the Complaint not specifically admitted herein.

Sentence No. 17: The allegations of Sentence No. 17 of the Complaint that begin with "He came running" are denied.

Sentence No. 18: The allegations of Sentence No. 18 of the Complaint that begin with "As plaintiff stood still" are denied.

Sentence No. 19: The allegations of Sentence No. 19 of the Complaint that begin with "And to the best of my knowledge" are denied.

Sentence No. 20: The allegations of Sentence No. 20 of the Complaint that begin with "Then they slammed" are denied.

Sentence No. 21: Defendants admit that Plaintiff was sprayed with Capstun. Defendants deny each and every allegation of Sentence No. 21 of the Complaint not specifically admitted herein.

Sentence No. 22: Defendants admit that Plaintiff was placed in an ASDA cell. Defendants deny each and every allegation of Sentence No. 22 of the Complaint not specifically admitted herein.

Sentence No. 23: The allegations of Sentence No. 23 of the Complaint that begin with, "After complaining" are denied.



Sentence No. 24: The allegations of Sentence No. 24 of the Complaint that begin with, “She said nothing” are denied.

Sentence No. 25: Defendants admit that Plaintiff was placed in ASDA 1. Defendants deny each and every allegation of Sentence No. 25 of the Complaint not specifically admitted herein.

Sentence No. 26: The allegations of Sentence No. 26 of the Complaint that begin with, “And plaintiff went approximately” are denied.

Sentence No. 27: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 27 of the Complaint that upon receiving medical attention Plaintiff had x-rays taken, and therefore deny same.

Sentence No. 28: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 28 of the Complaint that x-rays indicated Plaintiff had fractured ribs and that Plaintiff has several witnesses, and therefore deny same.

Sentence No. 29: The allegations of Sentence No. 29 of the Complaint that begin with, “The plaintiff filed many” are denied.

Sentence No. 30: The allegations of Sentence No. 30 of the Complaint that begin with, “Therefore there is no” are denied.

Sentence Nos. 31 - 35: The allegations of Sentence Nos. 31 through 35 of the Complaint that begin with “The plaintiff has received” discuss remedies Plaintiff believes he is entitled to receive. Because these sentences do not contain any allegations or statements of claim no response by the Defendants is required. To the



extent a response is required Defendants deny the allegations of Sentence Nos. 31 through 35 and deny that Plaintiff is entitled to any relief.

Sentence No. 36: The allegations of Sentence No. 36 of the Complaint that begin with, "Not only has the Plaintiff" are denied.

Sentence Nos. 37 - 39: The allegations of Sentence Nos. 37 through 39 of the Complaint that begin with "The plaintiff's pain from the above" state legal conclusions to which no response is required.

### **RELIEF**

Defendants deny that Plaintiff is entitled to any relief.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

1. The Complaint fails to state claims upon which relief may be granted.
2. The action and all claims are barred by Eleventh Amendment immunity.
3. As to any claims against the State or against Defendants in their official capacities, Defendants and the State are protected from liability by the doctrine of sovereign immunity.
4. The Defendants are entitled to qualified immunity.
5. As to any claims under state law, the Defendants are entitled to immunity under the State Tort Claims Act, 10 Del. C. §4001 *et seq.*
6. To the extent the Plaintiff seeks to hold Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

7. Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

8. This action and all claims are barred by the applicable statute of limitations.

9. Plaintiff has failed to exhaust his administrative remedies.

10. Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

11. The Plaintiff's claims are barred by his contributory negligence.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, Defendants respectfully request the Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the Defendants; (ii) awarding Defendants their fees and costs; and (ii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE  
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 577-8400

Attorney for the Defendants

Dated: March 20, 2006

**CERTIFICATE OF SERVICE**

I, Erika Y. Tross, Esq., hereby certify that on March 20, 2006, I caused a true and correct copy of the attached *Defendants' Answer To The Complaint* to be served on the following individual in the form and manner indicated:

**NAME AND ADDRESS OF RECIPIENT:**

Inmate Curtis M. Collins  
SBI #00314128  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**MANNER OF DELIVERY:**

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross

Erika Y. Tross (#4506)  
Deputy Attorney General  
Delaware Department of Justice  
Carvel State Office Building  
820 N. French Street, 6th Floor  
Wilmington, DE 19801  
302-577-8400

## Answers to Complaints

1:05-cv-00739-SLR Collins v. Kearney et al

**U.S. District Court**

**District of Delaware**

### Notice of Electronic Filing

The following transaction was received from Tross, Erika Yvonne entered on 3/20/2006 at 12:33 PM EST and filed on 3/20/2006

**Case Name:** Collins v. Kearney et al

**Case Number:** 1:05-cv-739

**Filer:** Rick Kearney  
James Chandler  
Berezinsky

**Document Number:** 18

### Docket Text:

ANSWER to Complaint by Rick Kearney, James Chandler, Berezinsky.(Tross, Erika)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

### Electronic document Stamp:

[STAMP dcecfStamp\_ID=1079733196 [Date=3/20/2006] [FileNumber=186782-0]  
[135bf1034d6c854945a69c515e7a84dd16cdec2c5c0233669e6f5f618af5997b3268  
afee16e273dd667fb9d2bf1585cff87f70f74a0b7a1b24db165d720b5033]]

### 1:05-cv-739 Notice will be electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

### 1:05-cv-739 Notice will be delivered by other means to:

Curtis M. Collins  
SBI #314128  
Delaware Correctional Center  
SHU 17-DL-2  
1181 Paddock Road  
Smyrna, DE 19977

2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CURTIS M. COLLINS,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-739-SLR
v.	)	
	)	Jury Trial Requested
WARDEN RICK KEARNEY, et al.,	)	
	)	
Defendants.	)	

**STATE DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT**

COMES NOW, State Defendants Warden Rick Kearney, Sergeant James Chandler, Officer Bradley Berezansky, Officer Michael Milligan, Officer Jeffrey Daisey, and Officer Irvin Johnson (the "State Defendants"), by and through their undersigned counsel, and hereby respond to the Amended Complaint of Plaintiff Curtis M. Collins ("Collins" or "Plaintiff"), dated March 29, 2006 and filed May 12, 2006 (D.I. 20) (the "Amended Complaint"). The Amended Complaint is not formatted in paragraphs. Therefore, State Defendants respond to the Amended Complaint by sections as follows:

**Jurisdiction**

The allegations of the "Jurisdiction" section of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required State Defendants specifically deny any wrongdoing.

**Previous Lawsuits**

State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the "Previous Lawsuits" section of the Amended Complaint and, therefore, deny same.

**Exhaustion Pursuant to PLRA**

The allegations of the "Exhaustion Pursuant to PLRA" section of the Amended Complaint are denied.

**Statement of Claim**

Sentence No. 1: The allegations of Sentence No. 1 of the "Statement of Claim" section of the Amended Complaint that begin with, "On 8-6-2005" are admitted.

Sentence No. 2: State Defendants admit that Plaintiff was talking in the chow hall during breakfast. State Defendants deny each and every allegation of Sentence No. 2 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 3: State Defendants admit that Plaintiff was ordered to dump his tray. By way of further response to the allegations of Sentence No. 3 of the "Statement of Claim" section of the Amended Complaint, State Defendants state that Plaintiff was ordered to dump his tray as a result of disobeying a direct order. State Defendants deny each and every allegation of Sentence No. 3 not specifically admitted herein.

Sentence No. 4: State Defendants admit that Plaintiff was told that there is no talking in the chow hall. State Defendants deny each and every allegation of Sentence No. 4 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 5: State Defendants admit that Plaintiff began talking to Sergeant Chandler after he was given a direct order to dump his tray. State Defendants

deny each and every allegation of Sentence No. 5 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 6: The allegations of Sentence No. 6 of the "Statement of Claim" section of the Amended Complaint that begin with the words "Sgt. Chandler did not," are denied. ✓

Sentence No. 7: The allegations of Sentence No. 7 of the "Statement of Claim" section of the Amended Complaint that begin with the words "As Curtis was leaving," are denied.

Sentence No. 8: State Defendants admit that Plaintiff turned around to face Officer Berezansky. State Defendants deny each and every allegation of Sentence No. 8 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 9: The allegations of Sentence No. 9 of the "Statement of Claim" section of the Amended Complaint that begin with the words "C/Os (Milligan), (Daisey) and (Irvin Johnson)," are denied. By way of further response, State Defendants state that Officer Milligan was not working at Sussex Correctional Institute on August 6, 2005. State Defendants further state that Officer Johnson was not working in the chow hall during breakfast on August 6, 2005.

Sentence No. 10: The allegations of Sentence No. 10 of the "Statement of Claim" section of the Amended Complaint that begin with the words "Then they sprayed," are denied. ✓

Sentence No. 11: State Defendants admit that Plaintiff was placed in an ASDA cell. State Defendants deny each and every allegation of Sentence No. 11 of



the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 12: State Defendants admit that Plaintiff was examined by a nurse on August 6, 2005. State Defendants deny each and every allegation of Sentence No. 12 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 13: The allegations of Sentence No. 13 of the "Statement of Claim" section of the Amended Complaint that begin with the words "She did no examination," are denied.

Sentence No. 14: State Defendants admit that Plaintiff was placed in ASDA 1. State Defendants deny each and every allegation of Sentence No. 14 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 15: State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 15 of the "Statement of Claim" section of the Amended Complaint that Plaintiff had x-rays taken which indicated his ribs were fractured, and therefore, deny same.

Sentence No. 16: State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 16 of the "Statement of Claim" section of the Amended Complaint that Plaintiff requested a copy of his x-rays and was told he could not have a copy, and therefore, deny same.



**Relief Requested**

State Defendants deny that Plaintiff is entitled to any relief.

**DEFENSES AND AFFIRMATIVE DEFENSES**

1. The Amended Complaint fails to state claims upon which relief may be granted.
2. The action and all claims are barred by Eleventh Amendment immunity.
3. As to any claims against the State or against State Defendants in their official capacities, State Defendants and the State are protected from liability by the doctrine of sovereign immunity.
4. Officials and employees of the State of Delaware acting in good faith within the scope of their employment and without knowingly violating well established federal rights, are entitled to qualified immunity and cannot be held liable in this action.
5. State Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 *U.S.C.* § 1983.
6. As to any claims sounding in state law, the State Defendants are immune from liability under the State Tort Claims Act, 10 Del. C. §4001, *et seq.*
7. To the extent the Plaintiff seeks to hold State Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 *U.S.C.* § 1983.
8. This action and all claims are barred, in whole or in part, by the

applicable statute of limitations or any other statutorily required administrative time requirement.

9. Plaintiff has failed to exhaust his administrative remedies, including but not limited to, remedies pursuant to 42 *U.S.C.* § 1997a(e).

10. State Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

11. The Plaintiff's claims are barred by his contributory negligence.

12. To the extent Plaintiff's claims sound in negligence, Plaintiff cannot state a cause of action under 42 *U.S.C.* § 1983.

13. Plaintiff fails to state a claim against State Defendants for failure to train or for maintenance of wrongful customs, practices and policies.

14. Plaintiff fails to state a claim against State Defendants for violation of the Eighth Amendment.

15. Plaintiff's injuries were caused, in whole or in part, and/or exacerbated by a pre-existing condition which existed prior to the date of any alleged wrongful conduct by the State Defendants.

16. Plaintiff's injuries and damages, if any, resulted from an intervening and superseding cause.

17. Plaintiff's own conduct proximately caused and/or exacerbated his injuries, if any.

18. Insufficiency of service of process.

19. Insufficiency of process.

20. Lack of jurisdiction over the person and subject matter.

WHEREFORE, State Defendants respectfully request the Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the State Defendants; (ii) awarding State Defendants their fees and costs; and (iii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE  
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 577-8400

Attorney for the State Defendants

Dated: October 31, 2006

**CERTIFICATE OF SERVICE**

I, Erika Y. Tross, Esq., hereby certify that on October 31, 2006, I caused a true and correct copy of the attached *State Defendants' Answer To The Amended Complaint* to be served on the following individual in the form and manner indicated:

**NAME AND ADDRESS OF RECIPIENT:**

Inmate Curtis M. Collins  
SBI #00314128  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**MANNER OF DELIVERY:**

- ☐ One true copy by facsimile transmission to each recipient
- ☒ Two true copies by first class mail, postage prepaid, to each recipient
- ☐ Two true copies by Federal Express
- ☐ Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross  
Erika Y. Tross (#4506)  
Deputy Attorney General  
Delaware Department of Justice  
Carvel State Office Building  
820 N. French Street, 6th Floor  
Wilmington, DE 19801  
302-577-8400

66

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CURTIS M. COLLINS, )  
 )  
Plaintiff, )  
 )  
v. ) Civ. No. 05-739-SLR  
 )  
WARDEN RICK KEARNEY, et al., )  
 )  
Defendants. )

**CERTIFICATION**

At Wilmington this 9<sup>th</sup> day of November, 2006;

I, Nancy Rebeschini, Esquire, pro se law clerk, and  
designated officer for depositions upon written questions held  
before me on November 2, 2006, do here by certify that:

1. The deposition of James Chandler was held on November 2,  
2006, at 1:30 p.m., at the J. Caleb Boggs Federal Building,  
Wilmington, Delaware.

2. On that same date, James Chandler declared before me, an  
individual authorized to administer oaths, that his written  
answers were true and correct.

3. I read aloud each and every deposition question  
submitted by plaintiff, Curtis M. Collins, for deponent, James  
Chandler.


4. I personally observed deponent, James Chandler, answer  
in writing, the deposition questions.

5. A true and correct copy of the written questions filed  
by plaintiff, the original written answers of deponent, and

written original objections made by his counsel are attached hereto and are filed with the court, and copies shall be served upon the parties and the deponents.

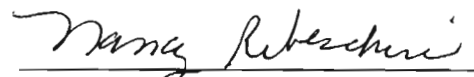
I, Nancy Rebeschini, certify under penalty of perjury that the foregoing is true and correct.

Executed this 9<sup>th</sup> day of November, 2006.

  
\_\_\_\_\_  
Nancy Rebeschini, Esquire,  
Designated Officer

CERTIFICATE OF SERVICE

I hereby certify that on November <sup>9</sup>, 2006, I caused to be electronically filed the attached Certification with the Clerk of the Court using CM/ECF, which will send notification of such filing to Erika Yvonne Tross, Esquire, counsel for defendants. I further certify I caused a true and correct copy of the attached Certification to be served via U.S. mail on plaintiff, Curtis M. Collins, SBI #314128, Delaware Correctional Center, SHU 17-DL-2, 1181 Paddock Road, Smyrna, DE 19977.

  
\_\_\_\_\_  
Nancy Rebeschini, Esquire,  
Designated Officer

Sgt

Sgt. CHANDLER

① THE PLAINTIFF "SEEN YOU WHILE HE WAS  
# laying on the ground, AND I NOTICED  
THAT YOU WAS STANDING THERE LAUGHING YOU  
HEAD 'OFF AT THE SITUATION INSTEAD OF  
STOPPING UNFAIR TREATMENT TOWARDS A  
INMATE WHY THEN DIDN'T YOU "SGT" PUT A  
STOP TO WAS HAPPENING?

Sgt.

# ② HAVE YOU EVER SEEN OR HEARD A FELLOW  
OFFICERS RASH OUT AT A INMATE BECAUSE  
OF FAMILY PROBLEMS?

# ③ SGT. IS IT TRUE WHEN PLAINTIFF COLLINS  
CAME TO YOU ABOUT A UNPROFESSIONAL  
OFFICER'S BERZANSKY BEING OUT OF  
CONTROL?

Sgt.

# ④ IS IT TRUE THAT OFFICER BERZANSKY  
RAN TOWARDS THE PLAINTIFF IN THE  
"CHOWHALL" AND ASSAULTED THE PLAINTIFF  
BY PUNCHING THE PLAINTIFF IN THE FACE  
FOR NO REASON AT ALL?



Sgt.

Sgt. CHANDLER

#5

IS IT THE TRUTH "WHEN AN INMATE "GET SERIOUSLY" HURT, THEY MUST IMMEDIATELY BE TAKEN TO MEDICAL IN ANY EMERGENCY SITUATION?"

#6

WHY THEN DIDNT YOU SEE THAT THE PLAINTIFF GOT PROPPER MEDICAL TREATMENT?

#7#

Sgt. IS IT TRUE YOU HAVE A PERSONAL VENDETTA AGAINST THE PLAINTIFF? OR YOU JUST DONT CARE ABOUT THE WELL BEING OF INMATES?

#8#

Sgt.

ALSO IS THE TRUTH THAT "S.C.I. IS A REAL "RECAH" PRISON?"

#9

OK" FOR THE RECORD WITH ALL THESE SERIOUS QUESTION THAT WAS ASKED HERE TODAY WOULD YOU BE WILLIN TO TAKE A BIG LIE DETECTOR TEST!

#10

IS IT TRUE THAT ANY OFFICER WITH A HIGH RANK IS TO TAKE CHARGE WITHOUT ANY OFFICER WITHOUT NO RANK YOU WERE THE ONLY HIGH RANK IN THE CHOWHALL WHY YOU, DIDNT YOU TAKE CHARGE OF THE SITUATION!

- ① It was impossible for the inmate to see me due to the fact that he was face down. Also Capston had been used on him and this greatly impairs the vision. As to the question whether or not I was laughing is untrue & incorrect. By the time I got to the back of the chow hall the Fm (Curtis Collins) had already been sprayed and handcuffed at that time.
- ② I don't discuss officers family problems with them so I would not know.
- ③ No
- ④ Inmate Collins was removed from his chow hall due to his trying to incite others to a riot. Fm Collins was given a direct order by myself to exit the chow hall which he failed to do.
- ⑤ Yes
- ⑥ He was taken to medical by the officer involved, cleared and placed in a holding cell.
- ⑦ No

⑧ No

⑨ No

⑩ Because with three other officers involved in the situation, I was the only one left to watch the other 30 or so high security in mates that were still in the Chowhall at that time.

11-2-06

  
James R. Chandler

Deposition of Sgt. Chandler

11/2/06

1. No objection
2. Objection - irrelevant
3. Objection - unintelligible
4. Objection - compound question
5. No objection
6. Objection to form
7. Objection compound
8. Objection unintelligible
9. Objection
10. Objection unintelligible

Erica Y. Jones #4506  
Date: 11/2/06

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CURTIS M. COLLINS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 05-739-SLR  
 )  
 WARDEN RICK KEARNEY, et al., )  
 )  
 Defendants. )

## CERTIFICATION

At Wilmington this 5<sup>th</sup> day of November, 2006;

I, Nancy Rebeschini, Esquire, pro se law clerk, and designated officer for depositions upon written questions held before me on November 8, 2006, do here by certify that:

1. The deposition of Bradley Berezansky was held on November 8, 2006, at 9:30 a.m., at the J. Caleb Boggs Federal Building, Wilmington, Delaware.

2. On that same date, Bradley Berezansky declared before me, an individual authorized to administer oaths, that his written answers were true and correct.

3. I read aloud each and every deposition question submitted by plaintiff, Curtis M. Collins, for deponent, Bradley Berezansky.

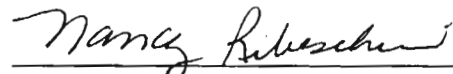
4. I personally observed deponent, Bradley Berezansky, answer in writing, the deposition questions.

5. A true and correct copy of the written questions filed by plaintiff, the original written answers of deponent, and

written original objections made by his counsel are attached hereto and are filed with the court, and copies shall be served upon the parties and the deponents.


I, Nancy Rebeschini, certify under penalty of perjury that the foregoing is true and correct.

Executed this 9<sup>th</sup> day of November, 2006.

  
\_\_\_\_\_  
Nancy Rebeschini, Esquire,  
Designated Officer

CERTIFICATE OF SERVICE

I hereby certify that on November <sup>9</sup>, 2006, I caused to be electronically filed the attached Certification with the Clerk of the Court using CM/ECF, which will send notification of such filing to Erika Yvonne Tross, Esquire, counsel for defendants. I further certify I caused a true and correct copy of the attached Certification to be served via U.S. mail on plaintiff, Curtis M. Collins, SBI #314128, Delaware Correctional Center, SHU 17-DL-2, 1181 Paddock Road, Smyrna, DE 19977.

  
Nancy Rebeschini, Esquire,  
Designated Officer

C/O Berezansky

1#

IS IT TRUE THAT YOU HAVE A "HISTORY" OF CAPSTUNTING INMATES BEFORE AND AFTER THEY ARE "HANDCUFFED" AT S.C.I. PRISON?

#2

IS IT TRUE THAT 90% OF YOUR DISCIPLINARY REPORTS ON INMATES ACCUSE "AT CHOW TIME" FEEDING THE INMATES AT S.C.I. PRISON?

#3

WORKING AS A CORRECTIONAL OFFICER FOR THE ~~STATE~~ STATE OF DELAWARE HAVE YOU EVER BEEN PLACED ON LEAVE DURING ANY INVESTIGATION CONCERNING ABUSE IN INMATE AT S.C.I. PRISON?

#4

WORKING AS A CORRECTIONAL OFFICER FOR THE STATE OF "DELAWARE" HAVE YOU BEEN SUED BY AN INMATE AT S.C.I. ACCUSING YOU OF ABUSE OR THREATENING BEHAVIOR, IF SO COULD YOU PLEASE STATE FOR THE RECORD HOW MANY TIMES YOU BEEN SUED OR ACCUSED OF INMATES ABUSE OF ANY OTHER THREATENING BEHAVIOR'S BY INMATES HOUSED AT S.C.I. PRISON?

5#

IS IT TRUE THAT 82% PERCENT OF YOUR DISCIPLINARY REPORTS FILED ON INMATES ARE AFRICAN AMERICAN INMATES AT S.C.I. PRISON?



#6# 90% BEREZANSKY

IS IT TRUE THAT OUT OF 90% PERCENT!  
OF YOUR INMATES ARE "WITH" AFRICAN  
AMERICAN "INMATES" RESOLVES" IN THEM  
BEING ASSAULTED" BY YOU CAPSTUN! BY YOU  
BEFORE AND AFTER" THE INMATES ARE ALREADY  
IN HANDCUFFS.

#7# SO

CAN YOU PLEASE TELL THE "COURTS WHY YOU  
RAN <sup>AT</sup> MR. COLLINS IN THE CHOW HALL AND"  
ASSAULTED MR. COLLINS BY PUNCHING MR. COLLINS  
IN THE FACE IN FRONT OF A BUNCH OF OTHER  
INMATES IN THE S.C.I. CHOW HALL

#8

IS IT TRUE THAT YOUR JOB IS TO BE A  
PROFESSIONAL OFFICER'S

#9

WELL CAN YOU PLEASE TELL THE COURTS  
WHY YOU USED PROFANITY ALL THE TIMES  
WHEN TALKING TO INMATES

#10#

HAVE YOU EVER BEEN ASSAULTED OR ABUSED  
IN THE PAST BY AN AFRICAN AMERICAN  
MALE" WHILE YOU WERE OUT OF UNIFORM  
OR IN UNIFORM.

c/o Bradley Berezansky

11/08/06

- 1) No
- 2) No
- 3) No
- 4) Yes, once
- 5) I don't know! I don't keep track.
- 6) NO
- 7) I was approached by you not the other way around.  
You lunged at me and were capstunned and taken  
to the ground and cuffed.
- 8) Yes
- 9) I don't use profanity all the times while talking to  
inmates.
- 10) NO

Bradley S. Berezansky



Deposition of Bradley Berzansky

11/8/06

Objections:

1. Objection - Irrelevant
2. Objection - Irrelevant
3. No objection
4. Objection - Compound + Irrelevant
5. Objection - Irrelevant
6. Objection - Form
7. No objection
8. No objection
9. Objection - Form
10. Objection - Irrelevant

Erika Y. Tros (#4506)  
Erika Y. Tros

Disciplinary#  
4989

SCI Sussex Correctional Institution

Date: 06/19/2005

PO Box 500

GEORGETOWN DE, 19947

Phone No. 302-856-5280

**DISCIPLINARY REPORT**Disciplinary Type: Class1Housing Unit: MULTI-SECURITYIR#: 10557

SBI#	Inmate Name	Inst. Name	Location Of Incident	Date	Time
00314128	Collins, Curtis M	SCI	MEDIUM	06/17/2005	06:00

Violations: 1.05/200.225 [REDACTED], 1.06/200.203 Disorderly or Threatening BehaviorWitnesses: 1. Hall, Shcan2. N/A3. N/A**Description of Alleged Violation(s)**

I/M Collins Became Disorderly During Chow And Stated Fuck You . You Better Not Put Your Hands On Me In A Threatening Manner. Trying To Get Other Inmates Involved Or Come To His Aide. While On The Tier. He Again Stated Fuck You And You Better Not Put Your Hands On Me As If Trying To Provoke Others To Become Involved.

Reporting Officer: Hastings, Samuel (CO Corporal/Sgt. - Large Inst.)**Immediate Action Taken**Immediate action taken by: Hastings, Samuel -CO Corporal/Sgt. - Large Inst.

N/A

**Offender Disposition Details**Disposition: N/ADate: N/ATime: N/ACell Injured? NoReason: N/ADisposition Of Evidence: N/A**Approval Information**Approved: ☒Disapproved: ☐Approved By: Truitt, George C (Shift Commander - Large Inst.)Comments: N/A**Shift Supervisor Details**

Date Received:

Time:

Received From:   **Shift Supervisor Determination:**

- ☐ Upon reviewing this Disciplinary Report, I conclude that the offense may be properly responded to by an immediate revocation of the following privileges(see reverse side) for        hours not to exceed 24 hours)
- ☐ Upon reviewing this Disciplinary Report, I conclude that the offense would be properly responded to by Disciplinary Hearing

Truitt, George C (Shift Commander - Large Inst.)

I have received a copy of this notice on DATE:            TIME:            and have been informed of my rights to have a hearing and to present evidence on my own behalf. I understand, if found guilty, I will be subject to imposition of sanctions outlined in the Rules of conduct.

Preliminary Hearing  
Officer:

Offender:

Collins, Curtis M

\* \* \*  
UNITED STATES DISTRICT COURT  
\* \* \*

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OPINION  
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IN \* DISTRICT \* COURT \* OF \* DELAWARE  
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CONSTITUTIONAL PROVISION  
EIGHT AMENDMENT  
FOURTEENTH AMENDMENT



## \* NATURE STAGE OF PROCEEDINGS \*

On 8-6-2005 Plaintiff Curtis M. Collins entered the main chow hall at Breakfast time while at the Sussex Correctional Center located in Georgetown, De. He asked other inmates already seated at the table to slide down so he could sit down to eat, at which time C/O Berezansky told Mr. Collins to "shut the fuck up" and "Throw your fucking food tray away" Mr. Collins asked C/O Berezansky why he had to throw away his food tray. C/O Berezansky responded There no talking in the chow Hall, Mr. Collins was not having a conversation with another inmate, he was simply trying to get a place vacated so he could eat his food. Mr. Collins then use the chain of command rank in which he ask Sgt. Chandler why he couldn't finish his food. Sgt. Chandler didn't respond. Mr. Collins dumped his food tray. As Mr. Collins was leaving the chow hall C/O Berezansky made a comment directed to Mr. Collins. Then Mr. Collins turned around in attempt to hear what C/O Berezansky said, C/O Berezansky punched Mr. Collins in his face. Then hand cuff and pepper spray Mr. Collins before the rest of the C/O staff of C/O Milligan, Daisey, Irvine Johnson maliciously assault Mr. Collins. When a member from SET medical staff ~~REFUSE~~ <sup>REFUSE</sup> to look at Mr. Collins injuries. She told Mr. Collins to "stop crying like a little bitch." Mr. Collins went 47 days without receiving proper medical treatment. since then x-rays were taken of Mr. Collins ribs that displayed his ribs was fractured Mr. Collins was refuse copies of

\* NATURE \* STAGES \*  
OF PROCEEDINGS

PAGE 1

his medical report by the doctor at  
Sussex Correction Center in Georgetown, De



\*  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE  
\*

CIVIL NO. 105-739-S.L.R.

## STATEMENT \* OF THE FACTS

Delaware Department of Corrections has a dietitian, who puts together a menu in which an inmate will receive all proper required nutritions.

Department of Corrections, Commissioner, Stanley Taylor and Sussex Correctional Institution, Warden, Rick Kearney support their correctional officer to violate Inmate's Fourteenth Amendment right to due process under civil right act by permitting the correctional office to order Inmates to dump their food tray and not providing the required food nutrient design by the dietitians.

Excessive use of force, assault and battery, and verbal abuse violated Mr. Collins constitutionally protected rights in accordance with the Eighth Amendment of United States constitution, By physically Beaten Mr. Collins. The actions by the Correctional officers also violated The Fourteenth Amendment of United States Constitution, Equal Protection right.

When the medical staff failed to provide adequate medical attention it also violated Mr. Collins Eighth Amendment of United State constitution excessive cruel unusual punishment.

\* THE  
\* STATE OF  
\* DELAWARE  
\* ARGUMENT \*

Delaware, Department of Correction, Commissioner, Stanley Taylor and Sussex Correctional Institution, Warden, Rick Kearney failure to control Correctional officer with their knowledge of the Correctional officers repetitive use of excessive force constitute a de facto policy Popow v Margate 476 F. Supp 1237.

Delaware Department of Corrections has a history for using excessive force violating the eighth and fourteenth Amendment of United States Constitution Davidson v Dixon 386 F. Supp 482 All prisoner is entitle to be in an environment that's free from cruel and unusual Punishment under the eighth and Fourteenth Amendment Nussle vs. Porter 122 S.Ct 983.

This case should be ruled more by the merits then technicalities. The Department of Correction Control all Paper work. Commissioner, Stanley Taylor went under a major review for the neglect of Department of Correct medical Staff. In that same error Mr. Collins was denied medical treatment also denied right to x-ray in his personal medical file. Dole v Arce Chemical Co. 921 F.2d 484

The Correctional officers was maliciously and Sadistically when they hand cuff, sprayed

## Argument conti

two cans of pepper spray in Mr. Collins face. Then continue to beat Mr. Collins Hudson 112 S.Ct 995  
When a prisoner is under control where the Correctional officers can't be harmed. Then continue to physically hurt Mr. Collins that act violate Prisoner Fourteenth Amendment right to due process under civil right act  
Davidson v Dixon 386 F. Supp. 482.

Although it may appear that some Correctional officer didn't physically beat Mr. Collins personally they to share equal amount of responsibility Because of their knowledge of event that took place Even the medical staff that refuse Mr. Collins Proper treatment is equally responsible for Mr. Collins pain and suffering. Bracey v Grenoble 494 F.2d 566, Byrd v Brishke 466 F.2d 6, Landman v Royster 354 F. Supp 1302, Wright v McMann 460 F.2d 126

State Prisoners are entitle to recover for Physical abuse of his body under civil right act  
Curtis v Everett 489 F.2d 516 In this kind of premeditate malicious assault punitive damages are appropriate Collins v Brown 268 F. Supp 198  
Lampert v Renold Metal Co. 372 F.2d 245 Correctional officer are not elligable for sovereign immunity when they act unconstitutionally Monroe v Pope 81 S.Ct 473

\*DISTRICT COURT\*

8

\*  
CONCLUSION

MOREOVER "THE PLAINTIFF

BELIEVES THAT SUFFICIENT  
EVIDENCE EXIST FOR THIS HONORABLE  
COURT TO GRANT RELIEFS HE REQUESTED.

RESPECTFULLY  
Curtis Collins

DELAWARE CORRECTIONAL CENTER

#1181 #PADDOCK RD SMYRNA DELAWARE  
19977

CERTIFICATE OF SERVICE

I CURTIS M. COLLINS

hereby certify that

ON 11-30-06 I CAUSED A TRUE AND CORRECT COPY OF THE

~~BRBP~~ ATTACHED WAS HANDED TO A DEC, CORR, OFFICER TO PLACE

ON A DEC, U.S. MAILIN SYSTEM TO FORWARD TO:

CLERK

PETER T. DAHLCO

UNITED STATES DISTRICT COURT  
OF DEL, LOCK BOX 18#  
844 N. King St  
Wilm, DEL,  
19801-3570 #

DEFENDANTS COUNSEL  
ERIKA Y. TROSS  
DEPUTY ATTORNEY GENERAL  
D.E. PT. OF JUSTICE  
CARVER STATE BLDG  
820# N FRENCH ST WILM/DEL  
19801

RESPECTFULLY SUBMITTED

CURTIS M. COLLINS  
DEL, CORR, CENTER  
1181 PADDOCK RD  
SMYRNA DEL

III "DISTRICT COURT"

PAGE  
# 11

PLAINTIFF "WITNESSES"

Bobby PERCE m s B Kitchen WORKER  
WILLIAM DEVONSHIRE S b I 193813

John PALMER S b I 194390

Others ALSO HAVE plenty more WITNESSES

that were "PRESENT ON 8-6-05 m s B chow hall

# EXHIBITS



\* IN THE "UNITED STATES" DISTRICT COURT \*  
\* FOR THE DISTRICT OF DELAWARE \*

CURTIS M. COLLINS

CAUSE NO. 105-739-SLR.

VS.

WARDEN ROCK KEARNEY ET AL,

\* \* \*  
PLAINTIFF "APPENDIX" \* \* \*

~~CURTIS~~  
CARL C. DANBERG"  
ATTORNEY GENERAL  
OFF. DEL. DEPT. OF JUSTICE  
CARVER STATE Bldg 820<sup>th</sup>  
N. French St WILM, DEL  
19801

\*  
RESPECTFULLY  
CURTIS M. COLLINS  
DELAWARE CORRECTIONAL CENTER  
481, PADDOCK ROAD SMYRNA DEL, 19977

~~DATA~~



"WRITTED" STATES "DISTRICT" COURT  
FOR THE DISTRICT OF DELAWARE

\*

CIVIL NO. 05-739-SLR-

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PO Box 500  
GEORGETOWN DE, 19947

Phone No. 302-856-5280

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**DISCIPLINARY REPORT**

Disciplinary Type: <u>Class1</u>		Housing Unit: <u>MULTI-SECURITY</u>		IR#: <u>11018</u>	
SBI#	Inmate Name	Inst. Name	Location Of Incident	Date	Time
00314128	Collins, Curtis M	SCI	MULTI-SECURITY	08/06/2005	06:00

Violations: 1.06/200.203 Disorderly or Threatening BehaviorWitnesses: 1. N/A2. N/A3. N/A**Description of Alleged Violation(s)**

On The Above Date And Time, I/M Collins, Curtis 00314128 Was Ordered To Lock In For Violating Chow Hall Rules And Regulation I/M Collins Was Ordered Twice To Dump His Tray. After Dumping The Tray, I/M Collins Yelled Curses At Myself (C/O Berezansky) And Walked Towards Me With Clinched Fists And Teeth As To Want To Fight Me. I Capstuned Him, Took Him To The Ground And Cuffed Him And Took Him To Be Seen My Medical. Eor

Reporting Officer: Berezansky, Bradley (Correctional Officer)**Immediate Action Taken**Immediate action taken by: Berezansky, Bradley -Correctional Officer

Ordered I/M Collins To Dump His Tray.

**Offender Disposition Details**Disposition: N/ADate: N/ATime: N/ACell secured? NoReason: N/ADisposition Of Evidence: N/AReceived, Reviewed &  
Approved**Approval Information**Approved: ☒Disapproved: ☐Approved By: Johnson, Joseph H (Staff Lt./Lt)

AUG 06 2005

Comments: Sent To Lt. J Isaacs

Watch Commander

**Shift Supervisor Details**Signature [Signature]Date Received: 8/8/05 Time: 0700 Received From: \_\_\_\_\_**Shift Supervisor Determination:**

- ☐ Upon reviewing this Disciplinary Report, I conclude that the offense may be properly responded to by an immediate revocation of the following privileges(see reverse side) for \_\_\_\_\_ hours not to exceed 24 hours)
- ☒ Upon reviewing this Disciplinary Report, I conclude that the offense would be properly responded to by Disciplinary Hearing

Joseph H Johnson  
Johnson, Joseph H (Staff Lt./Lt)

I have received a copy of this notice on DATE: 8-9-05 TIME: 0255 and have been informed of my rights to have a hearing and to present evidence on my own behalf. I understand, if found guilty, I will be subject to imposition of sanctions outlined in the Rules of conduct.

Preliminary Hearing  
Officer:L.T. JohnsonOffender: XCollins, Curtis M

Incident#  
11020

SCI Sussex Correctional Institution

Date: 08/06/2005

PO Box 500  
GEORGETOWN DE, 19947  
Phone#: 302-856-5280

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**INCIDENT REPORT**

Group: N/A Type: Inmate Involved Incident Date: 08/06/2005 Time: 06:00 Confidential: No

Facility: SCI Sussex Correctional InstitutionFollowup Required: NoIncident Location: MULTI-SECURITYLocation Description: MSB Chow HallViolated Conditions: 1.06/200.203 Disorderly or Threatening Behavior**Description of Incident:**

On the above date, time, and location, I C/O S. Emerick observed C/O Berezansky give I/M Collins, Curtis 00314128 a direct order to stop talking or dump his tray. I/M Collins dumped his tray and then became disorderly, and walked towards C/O Berezansky in a threatening manner with his fists clinched. I/M Collins then lunged at C/O Berezansky as he was exiting the chow hall. C/O Berezansky then pulled and sprayed Capstun directly in I/M Collins' face. I/M Collins was then taken to the ground by myself, C/O Berezansky, and C/O Daisey to be handcuffed. I/M Collins was then escorted to the holding cell, seen by medical where he complained of no injuries. After being cleared by medical, I/M Collins was placed in ASDA 1 Cell 1.

Injured Persons	Hospitalized	Nature Of Injuries
N/A	N/A	N/A

Evidence Type: N/ADate Collected: N/ADiscovered By: N/ASecured By: N/AType of Force Used: ☐ PHYSICAL ☐ CHEMICAL ☐ STUN ☐ OTHER ☐ CAPSTUN ☒ NONERestraints Used : N/A

Immediate Action Taken:

N/A

Individuals Involved			
Person Code	Name	SBI#	Title
Inmate	Curtis, Collins M	00314128	N/A
Staff	Shawn, Emerick T	N/A	Correctional Officer
Staff	Bradley, Berezansky	N/A	Correctional Officer
Staff	Jeffrey, Daisey	N/A	CO Corporal/Sgt. Small Inst.

Reporting Officer: Emerick, Shawn T (Co Corporal/Sgt. SmallEntered By: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.)

Approval Information

☒ Approved ☐ Disapproved Date: 08/06/2005 Approved by: Johnson, Joseph H (Staff Lt./Lt)Comments: Sent to Lt. J Isaacs

Received, Reviewed &  
Approved  
AUG 06 2005  
Warden Commander  
Signature [Signature]

D00180



Incident#  
11019

SCI Sussex Correctional Institution

PO Box 500  
GEORGETOWN DE, 19947  
Phone#: 302-856-5280

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## INCIDENT REPORT

Group: N/A Type: E.M. Incident Date: 08/06/2005 Time: 06:00 Confidential: No

Facility: SCI Sussex Correctional Institution

Followup Required: No

Incident Location: MULTI-SECURITY

Location Description: CHOW HALL

Violated Conditions: 1.06/200.203 Disorderly or Threatening Behavior

### Description of Incident:

ON THE ABOVE DATE AND APPRX. TIME, I C/O DAISEY WAS ASSISTING WITH CHOW WHEN I HEARD C/O BEREZANSKY GIVE I/M CURTIS COLLINS A DIRECT ORDER TO STOP TALKING OR DUMP HIS TRAY. AT THAT TIME I/M COLLINS BECAME EVEN LOUDER AND CAUSING A COMMOTION. THEN C/O BEREZANSKY ORDERED I/M COLLINS TO DUMP HIS TRAY AND RETURN TO CELL AND LOCK IN. AS I/M COLLINS WAS EXITING THE CHOW HALL, I/M COLLINS TURNED AROUND IN A THREATING MANNER AND RAISED HIS FIST IN A FIGHTING STANCE AND WAS LUNGING TOWARD C/O BEREZANSKY. C/O. BEREZANSKY AT THAT TIME PULLED CAPSTUN AND SPRAYED I/M CURTIS COLLINS. AT THAT TIME I/M COLLINS WAS TAKEN TO THE GROUND BY I C/O DAISEY, C/O EMERICK AND C/O BEREZANSKY AND HANDCUFFED AND TAKEN TO HOLDING CELL AND WAS SEEN BY MEDICAL WITH NO INJURIES AND PLACED IN ASDA-1, CELL-1. E.O.R

### Injured Persons

### Hospitalized

### Nature Of Injuries

N/A

N/A

N/A

Evidence Type: N/A

Date Collected: N/A

Discovered By: N/A

Secured By: N/A

Type of Force Used: ☐ PHYSICAL ☐ CHEMICAL ☐ STUN ☐ OTHER ☒ CAPSTUN ☐ NONE

Restraints Used : HANDCUFFS

### Immediate Action Taken:

I/M COLLINS BECAME THREATING AND DISORDERLY WAS SPRAYED WITH CAPSTUN, HANDCUFFED AND WAS SEEN BY MEDICAL. PLACED IN HOLDING CELL

### Individuals Involved

Person Code	Name	SBI#	Title
Staff	Jeffrey, Daisey	N/A	CO Corporal/Sgt. Small Inst.
Staff	Bradley, Berezansky	N/A	Correctional Officer
Staff	Shawn, Emerick T	N/A	Correctional Officer
Inmate	Curtis, Collins M	00314128	N/A

Reporting Officer: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.) Entered By: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.)

### Approval Information

☒ Approved ☐ Disapproved Date: 08/06/2005 Approved by: Johnson, Joseph H (Staff Lt./Lt)

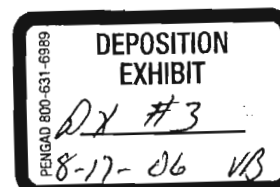
Comments: Sent to Lt. J Isaacs

Received, Reviewed &  
Approved

AUG 06 2005

Watch Commander

Signature [Signature]



West

000181

## Answers to Complaints

1:05-cv-00739-SLR Collins v. Kearney et al

**U.S. District Court**

**District of Delaware**

### Notice of Electronic Filing

The following transaction was received from Tross, Erika Yvonne entered on 10/31/2006 at 2:04 PM EST and filed on 10/31/2006

**Case Name:** Collins v. Kearney et al

**Case Number:** 1:05-cv-739

**Filer:** Rick Kearney  
Berezansky  
James Chandler  
Milligan  
Daisey  
Irvin Johnson

**Document Number:** 62

### Docket Text:

ANSWER to Complaint with Jury Demand by Rick Kearney, James Chandler, Berezansky, Milligan, Daisey, Irvin Johnson.(Tross, Erika)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

### Electronic document Stamp:

[STAMP dcecfStamp\_ID=1079733196 [Date=10/31/2006] [FileNumber=295632-0]  
] [70af27142678dd81447a8502f3f8f4235f538152726f78022312fdb1dad5add054f  
73b21b3d653bfe42f400ed5acd80507ebd1f988a505f4bdae464460588933]]

### 1:05-cv-739 Notice will be electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

### 1:05-cv-739 Notice will be delivered by other means to:

Curtis M. Collins  
SBI #314128  
Delaware Correctional Center  
SHU 17-DL-2  
1181 Paddock Road  
Smyrna, DE 19977



## Other Documents

1:05-cv-00739-SLR Collins v. Kearney et al

PaperDocuments

U.S. District Court

District of Delaware

## Notice of Electronic Filing

The following transaction was entered on 11/9/2006 at 5:07 PM EST and filed on 11/9/2006

**Case Name:** Collins v. Kearney et al

**Case Number:** 1:05-cv-739

**Filer:**

**Document Number:** 66

### Docket Text:

CERTIFICATION by Nancy Rebeschini, Esq. re deposition of James Chandler held on November 2, 2006. (fmt)

### 1:05-cv-739 Notice has been electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

### 1:05-cv-739 Notice has been delivered by other means to:

Curtis M. Collins  
SBI #314128  
Delaware Correctional Center  
SHU 17-DL-2  
1181 Paddock Road  
Smyrna, DE 19977

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1079733196 [Date=11/9/2006] [FileNumber=300757-0]  
[90911be9d5322bdc1b1eedb51ca65bc80b993d58d44b425ae09d2eb7eb93c9a680d7  
af63d0ec4bf6986ab1aa3f12246e6da2896e5e0b32d3980bdc35833cf147]]